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No. 565

In the Supreme Court of the United States

OCTOBER TERM, 1930

WRIGHT & TAYLOR, INC., PETITIONER

v.

ROBERT H. LUCAS, COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF KENTUCKY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT AND MOTION TO ADVANCE

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MEMORANDUM FOR THE RESPONDENT AND MOTION TO ADVANCE

The question presented is whether Section 611 of the Revenue Act of 1928, c. 852, 45 Stat. 791, 875 (U. S. C., Supp. III, Title 26, Sec. 2611), bars the right which the petitioner otherwise would have had to recover taxes and interest thereon which had been collected after the statutory period of limitations had expired.

The same question is now presented in a number of cases pending before this Court at the present

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term on writs of certiorari: *Graham and Foster, Co-partners, etc.*, v. *Goodcell, Collector*, No. 36; *Magee* v. *United States*, No. 65; *Oak Worsted Mills* v. *United States*, No. 104; *Taft Woolen Co.* v. *United States*, No. 105; *Second National Bank of Saginaw, Trustees*, v. *United States*, No. 323; *Boston Pressed Metal Co.* v. *United States*, No. 337; *United States* v. *Wyman, Partridge & Co.*, No. 416; *Daniel Reeves, Inc.*, v. *Anderson, Collector*, No. 463; *Roy & Titcomb, Inc.*, v. *United States*, No. 412; *Mascot Oil Co.* v. *United States*, No. 400; *American Glue Co.* v. *United States*, No. 519; *Jennings* v. *Anderson*, No. 529; *Heiner* v. *Erie Coal & Coke Co.*, No. 508.

The material facts in the instant case are substantially the same as in the cases just referred to. A further fact found in the instant case not present in the cases referred to is that after the filing of claims in abatement, and before the expiration of the statutory period for collection of the tax, the taxpayer executed a waiver extending the period for collection, but the claim was not acted upon nor was collection made within the time as so extended. It is the position of the respondent that the circumstance of the waiver does not distinguish the instant case from the other cases presenting the broad question involved.

The pertinent dates in the instant case are as follows (R. 22–24):

> June 17, 1919: Return for the fiscal year ended June 30, 1918, filed.

September 12, 1919: Assessment of tax shown on the return.

August, 1919: Assessment of additional tax for the year ended June 30, 1918.

September 15, 1919: Claims in abatement filed.

December 13, 1923: Waiver filed extending time for assessment.

June 17, 1924: Original 5-year period for assessment and collection expired.

December 13, 1924: Expiration of period for assessment and collection as extended by the waiver.

September 8, 1925: Tax, plus interest, collected.

September 30, 1925: Claim for refund filed.

April 14, 1927: Suit commenced. (R. 1.)

The District Court for the District of Kentucky held that Section 611 of the Revenue Act of 1928 barred recovery. (R. 33.) The Circuit Court of Appeals for the Sixth Circuit affirmed the judgment. (R. 48.)

Since the same question is already before this Court in a number of cases, the Collector does not oppose the granting of the petition in the instant case.

The respondent joins in the request of the petitioner (Pet. p. 7) that, in the event the petition is granted, the case be advanced for hearing with the other cases involving the same question, and

suggests that it be assigned to follow *Jennings* v. *Anderson*, No. 529.

Respectfully submitted.

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DECEMBER, 1930.

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